



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

July 25, 2017 Government Records Council Meeting

Elie C. Jones
Complainant

Complaint Nos. 2014-321, 2014-327 and 2014-328

v.

Township of Teaneck (Bergen)
Custodian of Record

At the July 25, 2017 public meeting, the Government Records Council (“Council”) considered the July 18, 2017 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Council dismisses the consolidated complaint because the Complainant withdrew the matter via an e-mail to the Office of Administrative Law on June 19, 2017. Therefore, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 25th Day of July, 2017

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 28, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 25, 2017 Council Meeting**

**Elie C. Jones¹
Complainant**

GRC Complaint Nos. 2014-321, 2014-327, and 2014-328

v.

**Township of Teaneck (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

July 24, 2014 OPRA request:³ Copy of security camera footage of Teresa Alston entering and leaving the Teaneck Police Headquarters (“TPD”) and Municipal Building on July 14, 2014, from 10:00 AM to 12:00 PM.

September 2, 2014 OPRA requests:⁴

Request 1: A copy of PD-14-028998, dated July 14, 2014.

Request 2: All arrest records for Teresa Alston for August 7, 2014, including arrest reports, required police reports, use of force reports, blotter, injury report of officer injured, incident reports, and police cruiser video.

Custodian of Record: Jaime L. Evelina (previous), Issa A. Abbasi (present)

Requests Received by Custodian: August 4, 2014; September 2, 2014

Response Made by Custodian: August 6, 2014, August 25, 2014, September 2, 2014; September 5, 2014

GRC Complaints Received: September 16, 2014; September 25, 2014

Background

April 26, 2016 Council Meeting:

At its April 26, 2016 public meeting, the Council considered the April 19, 2016 Findings and Recommendations of the Executive Director and all related documentation submitted by the

¹ No legal representation listed on record.

² Represented by William F. Rupp, Esq. (Hackensack, NJ).

³ This OPRA request is the subject of GRC Complaint No. 2014-321.

⁴ These OPRA requests are the subject of GRC Complaint No. 2014-327 and Complaint No. 2014-328.

parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. Absent a viewing of the disputed footage, the GRC is unable to determine whether the requested security camera footage was in fact exempt under OPRA. This complaint should therefore be referred to the Office of Administrative Law to determine the facts of the case and a further determination of whether the previous Custodian's actions amount to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances, limited to the Complainant's July 24, 2014 OPRA request. The Council emphasizes that the issues as to the disclosures of the records responsive to the Complainant's September 2, 2014 OPRA requests have already been determined by the Council (see below), and thus are not outstanding issues before the Office of Administrative Law.
2. Here, the Custodian certified that she provided the above-mentioned incident reports as well as a one-page arrest report, with Ms. Alston's personal identifying information and the criminal investigation narratives both redacted. Such redactions are proper pursuant to N.J.S.A. 47:1-A-1.1, and therefore the Council declines to order disclosure in this instance because the evidence of record indicates that the requested records were, in fact, disclosed to the Complainant. *See also Janeczko v. NJ Dep't of Law and Public Safety, Div. of Criminal Justice*, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), Nance v. Scotch Plains Twp. Police Department, GRC Complaint No. 2003-125 (January 2005).
3. In the instant matter, this portion of the Complainant's request sought an injury report of an officer from a particular date and event. The Custodian certified that the requested report related "directly to the police officer's medical history, diagnosis, treatment or evaluation" and was therefore properly denied pursuant to N.J.S.A. 47:1A-10. Such information would also be exempt under paragraph 4.b.1 of Executive Order 26. Therefore, the Custodian lawfully denied access to the responsive injury reports. *See also Fenichel v. Ocean City Board of Education (Cape May)*, GRC Complaint No. 2002-82 (January 2003), Rivera v. City of Passaic (Passaic), GRC Complaint No. 2011-214 (July 2012).
4. The Custodian has borne his burden of proof that he lawfully denied access to the requested "police cruiser video," described in the Complainant's September 2, 2014 OPRA request, because he certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ. (GRC Complaint No. 2005-49).

Procedural History:

On April 28, 2016, the Council distributed its Interim Order to all parties. On July 1, 2016, the consolidated complaint was transmitted to the Office of Administrative Law ("OAL"). On June 19, 2017, the Complainant e-mailed the OAL to withdraw his consolidated complaint.

On July 6, 2017, the OAL transmitted the consolidated complaint, marked “[w]ithdrawn,” back to the Government Records Council.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the consolidated complaint because the Complainant withdrew the matter via an e-mail to the Office of Administrative Law on June 19, 2017. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

July 18, 2017



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

April 26, 2016 Government Records Council Meeting

Elie C. Jones
Complainant

Complaint Nos. 2014-321, 2014-327, and 2014-328

v.

Township of Teaneck (Bergen)
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the April 19, 2016 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a unanimous vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Absent a viewing of the disputed footage, the GRC is unable to determine whether the requested security camera footage was in fact exempt under OPRA. This complaint should therefore be referred to the Office of Administrative Law to determine the facts of the case and a further determination of whether the previous Custodian’s actions amount to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances, limited to the Complainant’s July 24, 2014 OPRA request. The Council emphasizes that the issues as to the disclosures of the records responsive to the Complainant’s September 2, 2014 OPRA requests have already been determined by the Council (see below), and thus are not outstanding issues before the Office of Administrative Law.
2. Here, the Custodian certified that she provided the above-mentioned incident reports as well as a one-page arrest report, with Ms. Alston’s personal identifying information and the criminal investigation narratives both redacted. Such redactions are proper pursuant to N.J.S.A. 47:1-A-1.1, and therefore the Council declines to order disclosure in this instance because the evidence of record indicates that the requested records were, in fact, disclosed to the Complainant. See also Janeczko v. NJ Dep’t of Law and Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), Nance v. Scotch Plains Twp. Police Department, GRC Complaint No. 2003-125 (January 2005).
3. In the instant matter, this portion of the Complainant’s request sought an injury report of an officer from a particular date and event. The Custodian certified that the requested report related “directly to the police officer’s medical history, diagnosis, treatment or evaluation” and was therefore properly denied pursuant to N.J.S.A. 47:1A-10. Such information would also be exempt under paragraph 4.b.1 of



Executive Order 26. Therefore, the Custodian lawfully denied access to the responsive injury reports. See also Fenichel v. Ocean City Board of Education (Cape May), GRC Complaint No. 2002-82 (January 2003), Rivera v. City of Passaic (Passaic), GRC Complaint No. 2011-214 (July 2012).

4. The Custodian has borne his burden of proof that he lawfully denied access to the requested “police cruiser video,” described in the Complainant’s September 2, 2014 OPRA request, because he certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t of Educ. (GRC Complaint No. 2005-49).

Interim Order Rendered by the
Government Records Council
On The 26th Day of April, 2016

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: April 28, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting**

**Elie C. Jones¹
Complainant**

GRC Complaint Nos. 2014-321, 2014-327, and 2014-328

v.

**Township of Teaneck (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

July 24, 2014 OPRA request:³ Copy of security camera footage of Teresa Alston entering and leaving the Teaneck Police Headquarters (“TPD”) and Municipal Building on July 14, 2014, from 10:00 AM to 12:00 PM.

September 2, 2014 OPRA requests:⁴

Request 1: A copy of PD-14-028998, dated July 14, 2014.

Request 2: All arrest records for Teresa Alston for August 7, 2014, including arrest reports, required police reports, use of force reports, blotter, injury report of officer injured, incident reports, and police cruiser video.

Custodian of Record: Jaime L. Evelina (previous), Issa A. Abbasi (present)

Requests Received by Custodian: August 4, 2014; September 2, 2014

Response Made by Custodian: August 6, 2014, August 25, 2014, September 2, 2014; September 5, 2014

GRC Complaints Received: September 16, 2014; September 25, 2014

Background⁵

Requests and Responses:

July 24, 2014 OPRA request: Security Camera Footage of Teresa Alston

¹ No legal representation listed on record.

² Represented by William F. Rupp, Esq. (Hackensack, NJ)

³ This OPRA request is the subject of GRC Complaint No. 2014-321.

⁴ These OPRA requests are the subject of GRC Complaint No. 2014-327 and Complaint No. 2014-328.

⁵ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Elie C. Jones v. Township of Teaneck (Bergen), 2014-321, 2014-327, and 2014-328 – Findings and Recommendations of the Executive Director

On July 24, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 6, 2014, the Custodian requested an extension of time until August 25, 2014. On August 25, 2014, the Custodian responded in writing, denying the request and advising that security information is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. The Custodian re-sent the letter to the Complainant on September 2, 2014.

September 2, 2014 OPRA request 1: Copy of PD-14-028998

On September 2, 2014, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On September 5, 2014, the Custodian responded in writing, informing the Complainant that the TPD had provided a copy of Incident Report Form No. PD-14-028998, consisting of six (6) pages. The Custodian noted that the following redactions had been made in accordance with N.J.S.A. 47:1A-1.1: Teresa Alston’s address on page 1; the criminal investigation narrative on pages 3, 4, 5; and personal identifying information for the Complainant’s and Teresa Alston’s address. The Custodian further explained that redactions were made because they represented information that was criminal investigatory in nature, containing victim’s information and containing personal-identifying information. Finally, the Custodian informed the Complainant that the document would be provided following payment of a \$0.30 copying fee.

September 2, 2014 OPRA request 2: All Arrest Records for Alston, dated August 7, 2014

On September 2, 2014, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On September 5, 2014, the Custodian responded in writing, informing the Complainant that the TPD had provided copies of the following:

- Incident Report Form No. PD-14-032527, consisting of five (5) pages and containing the following redactions: Teresa Alston’s address in two locations on page 1 (deemed as personal-identifying information and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1) and narratives on pages 3, 4, and 5 (deemed as criminal investigatory in nature and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1);
- A one-page Arrest Report, No. 10181, with redactions of Ms. Alston’s personal information in five (5) locations, deemed as personal-identifying information and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1;
- A one-page Call for Service Report or Blotter, No. CD-14-033476, unredacted;
- Use of Force Report regarding CAD No. PD-14-032527, unredacted.

Additionally, the Custodian informed the Complainant that the portion of the request asking for “officer injury reports” was denied, as those records contained medical information regarding personnel and are documents that would be submitted to the Township of Teaneck’s (“Township”) risk-assessment managers. As such, those records are deemed exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Executive Order No. 26 (McGreevey 2002)(“EO 26”). With respect to the portion of the request concerning “police cruiser video,” the Custodian

advised that no such records existed. Finally, the Custodian informed the Complainant that the responsive documents would be provided following payment of a \$0.40 copying fee.

Denial of Access Complaints:

July 24, 2014 OPRA request⁶

On September 11, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant claimed that the Township had originally stated that he would receive the requested footage in August and that the eventual denial came “out of the blue.” The Complainant further alleged that the police officer “in charge of the records room” told him that he would receive the footage. In addition, the Complainant claimed that when he received the extension of time request on August 6, 2014, he was informed that the video would be made available on August 25, 2014. The Complainant further alleged that the Records Sergeant called him on August 5, 2014, and requested a picture of Ms. Alston in order to provide the video requested. The Complainant stated that the Records Sergeant advised that “the request was approved and the video was being redacted.”

September 2, 2014 OPRA requests 1 and 2⁷

On September 22, 2014, the Complainant filed a Denial of Access Complaint with the GRC concerning the above requests. The Complainant asserted that concerning his requests for “complete use of force reports – arrest reports and incident reports by all officers in the arrest of Teresa Alston on August 8, 2014 in Teaneck,” it was denied in part and granted in part. The Complainant alleged that the redactions were unlawful and that disclosure is “allowed by OPRA law.” Additionally, the Complainant alleged that, although he was provided a copy of PD-14-028998, the redacted information was disclosable pursuant to N.J.S.A. 47:1A-3(b).

Statement of Information:

On October 6, 2014, the Custodian filed a Statement of Information (“SOI”) concerning the above-three complaints.⁸

July 24, 2014 OPRA request

The Custodian certified that she received the Complainant’s OPRA request on August 4, 2014. The Custodian certified that she responded in writing on August 6, 2014, requesting an extension, before responding and denying the request on August 25, 2014 (the Custodian resent the letter on September 2, 2014).

The Custodian’s Counsel argued that the requested surveillance footage was properly withheld under OPRA, citing to N.J.S.A. 47:1A-1.1. The Custodian’s Counsel stated that the

⁶ GRC Complaint No. 2014-321

⁷ GRC Complaint No. 2014-327 and No. 2014-328.

⁸ In the consolidated SOI, the Custodian addressed OPRA requests previously filed by the Complainant. The GRC declines to consider issues that are not raised by the Complainant in his three Denial of Access Complaints.

Elie C. Jones v. Township of Teaneck (Bergen), 2014-321, 2014-327, and 2014-328 – Findings and Recommendations of the Executive Director

statute contains two pertinent exemptions: (1) emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein; and (2) security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software. The Custodian's Counsel argued that the requested security camera footage of the TPD's Headquarters and the Municipal Building would disclose the location of security cameras and the area scanned by the camera. Perhaps more important, the footage would disclose the areas which are not scanned. Thus, disclosure of the video surveillance may jeopardize the security of both the TPD's Headquarters and the Municipal Building. Counsel cited to Cardillo v. City of Hoboken (Zoning Officer), GRC Complaint No. 2005-158 (December 2006), in which the GRC held that plans containing video surveillance equipment were subject to an *in camera* review to determine whether same would jeopardize security. Additionally, Counsel argued that Executive Order 21 (McGreevey 2002) ("EO 21") in part provides an exemption to the disclosure of records that "would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage and terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism."

Counsel further argued that, apart from the issue of building security and security measures, the disclosure of the requested video would impact the privacy issues of the person recorded. Counsel asserted that Burnett v. County of Bergen, 198 N.J. 408 (2009), provided that the privacy provision contained in N.J.S.A. 47:1A-1 dictates that a public agency has a responsibility and obligation to safeguard from public access a citizen's personal information with which it is entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. Counsel also noted that the GRC determined in Gorman v. Gloucester City Police, GRC Complaint No. 2004-108 (October 2008), that a mobile vehicle surveillance tape implicated privacy rights of other individuals caught on the video tape. Counsel argued that, when privacy interests are at stake, a balance must be struck between the public's strong interest in disclosure and the need to safeguard from public access personal information that would violate a reasonable expectation of privacy.

Counsel noted that such a determination must balance the following factors: (1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access. Burnett, 198 N.J. 408, 427 (2009).

Counsel noted cross domestic violence orders are in effect against both parties and that the release of video surveillance tapes of one party to the other might be regarded as a violation of said orders, pursuant to N.J.S.A. 47:1A-1.1. Counsel further argued that a situation involving allegations of violence is similar to a case where a perpetrator seeks personal information regarding his victim and that N.J.S.A. 47:1A-2.2 exempts personal information pertaining to a person's victim.

Moreover, Counsel argued that OPRA is not a substitute for discovery in either a civil or criminal judicial proceeding. Counsel contented that in instances where both parties have cross complaints against each other, a court of law is the more appropriate forum to resolve those issues because both parties have an opportunity to appear and be heard.

September 2, 2014 OPRA request 1

The Custodian certified that she received the Complainant's OPRA request on September 2, 2014, and responded in writing on September 5, 2014. The Custodian certified that she informed the Complainant that the TPD had provided a copy of Incident Report Form No. PD-14-028998, consisting of six (6) pages. The Custodian noted that the following redactions had been made, in accordance with N.J.S.A. 47:1A-1.1: Teresa Alston's address on page 1; the criminal investigation narrative on pages 3, 4, 5; and personal identifying information for the Complainant's and Teresa Alston's address. The Custodian noted that these redactions were made, as they represented information that was criminal investigatory in nature, contained victim's information, and contained personal-identifying information. Finally, the Custodian informed the Complainant that the document would be provided following payment of a \$0.30 copying fee.

September 2, 2014 OPRA request 2

The Custodian certified that she received the Complainant's OPRA request on September 2, 2014. The Custodian certified that she responded on September 5, 2014, granting in part and denying in part. The Custodian averred that copies of the following records were provided:

- Incident Report Form No. PD-14-032527, consisting of five (5) pages and containing the following redactions: Teresa Alston's address in two locations on page 1 (deemed as personal-identifying information and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1) and narratives on pages 3, 4, and 5 (deemed as criminal investigatory in nature and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1);
- A one-page Arrest Report, No. 10181, with redactions of Ms. Alston's personal information in five (5) locations, deemed as personal-identifying information and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1;
- A one-page Call for Service Report or Blotter, No. CD-14-033476, unredacted;
- Use of Force Report regarding CAD No. PD-14-032527, unredacted.

The Custodian certified that the portion of the request asking for "injury reports" of an officer was denied, because it is a medical record and included in OPRA's various exceptions, which exempt personnel and pension records other than a public employee's name, title, position, salary, payroll record, length of service, date of termination and the reason therefore, and the amount and type of pension received. N.J.S.A. 47:1A-10. Counsel also noted that matters exempted from disclosure pursuant to State or federal statutes or regulations, Executive Orders of the Governor, Rules of Court, the Constitution of this State or judicial decisions, are exempt under OPRA. N.J.S.A. 47:1A-9.

In addition, Counsel noted that the Appellate Division has ruled that information, including the name of every person receiving health benefits, the justification or reason for that person's benefits, the type of coverage, the names of that person's dependents, and that person's claims history is not subject to disclosure under OPRA. Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005). The Court noted that "the custodian and the court must delve into state and federal statutes and regulations to determine if the information is considered confidential and whether access to the information is inimical to the public interest or the individual interests of the persons about whom information is sought, particularly when those entities or individuals have not received notice of the request and are unable to express their privacy concerns. . ." Id. at 622. Counsel argued that in addition to the express provisions of OPRA, the Custodian also considered EO 26, which exempts "information relating to medical, psychiatric, or psychological history, diagnosis, treatment or evaluation." Stating that the information sought related directly to the police officer's medical history, Counsel argued that the denial was proper.

Personal Identifying Redactions

In the SOI for the three matters, Custodian's Counsel noted that the Custodian had redacted from various records personal identifiers such as social security numbers ("SSN"), dates of birth, driver's license numbers, home addresses, and telephone numbers. Counsel argued that the redactions were proper pursuant to N.J.S.A. 47:1A-1.1, which provides:

A government record shall not include the following information which is deemed to be confidential...that portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support...

Id.

Counsel further argued that the Supreme Court, in Burnett v. Cnty. of Bergen, 198 N.J. 408, 437 (2009), held that "the twin aims of public access and protection of personal information weigh in favor of redacting SSNs from the requested records before releasing them. In that way, disclosure would not violate the reasonable expectation of privacy citizens have in their personal information." Counsel further noted that the Court in Burnett stated that the GRC has also previously relied on the privacy provision in addressing requests for access to government records. *See* Catrell v. N.J. Dept. of Corr., GRC Complaint No. 2006-121 (February 2007)(citing OPRA's privacy provision in denying disclosure of a visitor's list that contained names, relationships, addresses, and partial SSNs of inmate's visitors); Bernstein v. Boro of Park Ridge Custodian of Records, GRC Complaint No. 2005-99 (July 2005)(citing OPRA's privacy provision in denying disclosure of names and addresses of dog license owners to entrepreneur seeking to start an electric fence business).

Counsel argued that, considering the facts of the within matter and given the nature of the cross criminal complaints and cross domestic violence restraining orders, the Custodian was justified in redacting personal identifying information from the various records disclosed.

Criminal Investigatory Redactions

The Custodian noted that she furnished to the Complainant various police investigative reports, from which she redacted the narrative of the criminal investigations contained in the investigatory records. In support of the redactions, she cited N.J.S.A. 47:1A-1.1, which provides in part that government records do not include criminal investigatory records, defined as “a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.”

The Custodian certified that pursuant to the above-cited authority, she deleted the narrative of the criminal investigation from the investigatory records. Counsel further argued that prior GRC case law supports this action, as in Nance v. Scotch Plains Twp. Police Dep’t, GRC Complaint No. 2003-125 (January 2005). In Nance, the GRC determined that police incident reports are criminal investigatory records exempt from disclosure, pursuant to N.J.S.A. 47:1A-1.1. The status of records purported to fall under the criminal investigatory records exemption was further examined in Janeczko v. NJ Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80, where the GRC found that under OPRA, “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.” *See also* Ciarrocca v. Bordentown City Police Dep’t (Burlington), GRC Complaint No. 2010-155 (May 24, 2011).

Additional Party Submissions

On March 24, 2016, the GRC wrote to the Township seeking additional information in this matter regarding the Complainant’s July 24, 2014 OPRA request for security camera footage. On March 29, 2016, current Custodian Issa A. Abbasi responded to that request, asking for a 10 business day extension, which the GRC granted. On April 12, 2015, Custodian Abbasi submitted his legal certification response.

In his response, the current Custodian advised that he contacted the Police Department’s Records Division supervisors, Sergeant Michael Adomilli and his supervisor Captain Mark Distler, to “inquire about the footage in connection with [the Complainant’s] request.” The current Custodian certified that both individuals advised him that the footage was turned over to the previous Custodian, Ms. Evelina, to review and respond to the Complainant’s request in 2016.

The Current Custodian then advised that he had searched the Complainant’s OPRA file from 2014 and found other produced recordings he requested but did not find the footage in connection with his request for July 14, 2014. The current Custodian advised that he further inquired with the Police Department about the length of time security footage remains on their

hard drive and was advised that “footage older than one year was no longer available due to storage limitations.” The Current Custodian certified that, absent such footage, he is unable to review the Complainant’s request from 2014 and ascertain whether or not such footage could have been released to the Complainant. The current Custodian additionally stated that, regardless of what his predecessor Ms. Evelina stated in her response, “it would appear that a request for surveillance video of another individual may involve privacy concerns,” pursuant to Burnett v. County of Bergen, 198 N.J. 408 (2009).

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

July 24, 2014 OPRA request

The former Custodian certified that she received this request on July 24, 2014. After requesting an extension on August 6, 2014, she responded in writing on August 25, 2014, denying the request and advising that security information is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

The former Custodian made several arguments regarding this denial, grounded in OPRA and other cases, as to why the requested security footage of Teresa Alston entering and leaving the TPD’s Headquarters and Municipal Building need not be disclosed. The former Custodian asserted that disclosure of the requested video would reveal the location of security cameras at TPD’s Headquarters and the Municipal Building, the areas these cameras scan, and the areas which are not scanned. The former Custodian further argued that such a disclosure would jeopardize the security of both buildings, pursuant to N.J.S.A. 47:1A-1.1. The former Custodian also cited Cardillo, GRC Complaint No. 2005-158, which held that plans of a video surveillance system were subject to an *in camera* review to determine whether disclosing same would jeopardize security. In addition, the former Custodian cited to Executive Order 21 (McGreevey 2002), which exempts from disclosure records which “would substantially interfere with the State’s ability to protect and defend the State and its citizens against acts of sabotage and terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.”

Further, the former Custodian argued that, apart from the issue of building security, the disclosure of the requested video would impact Teresa Alston’s privacy. The former Custodian noted that there are cross domestic violence orders in place and suggested that release of the requested video may violate said orders. Also, the former Custodian suggested that where, as here, there are allegations of violence by and against each party, the facts are analogous to the case of a perpetrator seeking personal information of his victim. N.J.S.A. 47:1A-2.2.

In Rivera v. Wall Police Dep't. (Monmouth), (GRC Complaint No. 2008-280 and 2008-281) (April 2010), the GRC ordered an *in camera* review of requested mobile video recording media, in order to allow the GRC to exercise its discretion in determining whether an individual's privacy interests are outweighed by any factors militating in favor of disclosure of a government record. Following receipt of the Interim Order, the Police Department informed the GRC that the agency no longer had the record, due to the data being stored in the vehicle's computer system for approximately thirty (30) days, at which time it is written over by new data in continuous loop.

Here, following a request for additional information sent on March 24, 2016, the current Custodian informed the GRC that, after a review of the previous Custodian's file as well as discussion with TPD's Records Division Supervisors, he was advised that "footage older than one year was no longer available due to storage limitations." The current Custodian additionally certified that both Captain Distler and Sergeant Adomilli advised that the footage was turned over to the previous Custodian to review and respond to the Complainant's request in 2014. The current Custodian certified that, absent such footage, he is thereafter unable to review the Complainant's request from 2014 and ascertain whether or not such footage could have been released to the Complainant. The current Custodian additionally stated that, regardless of what his predecessor Custodian stated in her response, "it would appear that a request for surveillance video of another individual may involve privacy concerns," pursuant to Burnett v. County of Bergen, 198 N.J. 408 (2009).

Absent a viewing of the disputed footage, the GRC is unable to determine whether the requested security camera footage was in fact exempt under OPRA. This complaint should therefore be referred to the Office of Administrative Law to determine the facts of the case and a further determination of whether the previous Custodian's actions amount to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances, limited to the Complainant's July 24, 2014 OPRA request. The Council emphasizes that the issues as to the disclosures of the records responsive to the Complainant's September 2, 2014 OPRA requests have already been determined by the Council (see below), and thus are not outstanding issues before the Office of Administrative Law.

September 2, 2014 OPRA Request 1

The Custodian certified that the records responsive to the above request were provided to the Complainant. On September 5, 2014, the Custodian responded in writing, informing the Complainant that a copy of the requested Incident Report Form No. PD-14-028998, consisting of six (6) pages, was available following payment of a \$0.30 fee. The Custodian further certified that the following redactions were made, consistent with N.J.S.A. 47:1A-1.1., namely Teresa Alston's address on page 1; the criminal investigation narrative on p. 3, 4, 5; and personal identifying information for the Complainant's and Teresa Alston's address. The Custodian noted that these redactions were made because they represented information that was criminal investigatory in nature, containing victim's information and containing personal-identifying information.

September 2, 2014 OPRA Request 2

Arrest Reports, Required Police Reports, Use of Force Reports, Blotter, Incident Reports

The Custodian's certification indicates that she responded to the OPRA request on September 5, 2014, granting in part and denying in part. The Custodian certified that the following records were provided: (1) Incident Report Form No. PD-14-032527, consisting of five (5) pages and containing the following redactions: Teresa Alston's address in two locations on page 1 (deemed as personal-identifying information and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1); and narratives on page 3, 4, and 5 (deemed as criminal investigatory in nature and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1); (2) A one-page Arrest Report, No. 10181, containing redactions of Ms. Alston's personal information in five (5) locations, deemed as personal-identifying information and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, (3) A one-page Call for Service Report or Blotter, No. CD-14-033476, unredacted, and (4) Use of Force Report regarding CAD No. PD-14-032527, unredacted.

Regarding the above two requests, which sought a specific incident report from July 14, 2014 as well as arrest reports, use of force reports, and incident reports from August 7, 2014, the previous Custodian certified that she provided responsive records, redacting Ms. Alston's personal identifying information from two incident reports and one arrest report.

The GRC previously examined the status of records purported to fall under the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 in Janeczko v. NJ Dep't of Law and Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).⁹ In Janeczko, the Council found that under OPRA, "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed." Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, "[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete." More specifically, in Nance, the Council determined that police incident reports, continuation reports, and property and evidence reports are criminal investigatory records as defined by N.J.S.A. 47:1A-1.1, and are therefore exempt from disclosure.

Here, the Custodian certified that she provided the above-mentioned incident reports as well as a one-page arrest report, with Ms. Alston's personal identifying information and the criminal investigation narratives both redacted. Such redactions are proper pursuant to N.J.S.A. 47:1A-1.1, and therefore, the Council declines to order disclosure in this instance because the evidence of record indicates that the requested records were, in fact, disclosed to the Complainant. See also Janeczko; Nance.

⁹ Affirmed in an unpublished opinion of the Appellate Division in May 2004. Elie C. Jones v. Township of Teaneck (Bergen), 2014-321, 2014-327, and 2014-328 – Findings and Recommendations of the Executive Director

Injury Reports

OPRA recognizes exemptions to disclosure found in any Executive Order of the Governor, or any regulation promulgated under the authority of any Executive Order of the Governor. See N.J.S.A. 47:1A-9(a). In turn, EO 26's paragraph 4.b.1 specifically exempts from disclosure "information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation."

In Fenichel v. Ocean City Board of Education (Cape May), GRC Complaint No. 2002-82 (January 2003), the Council considered whether the requested information constituted a "personnel record." In attempting to reach a conclusion, the Council determined that "information that identifies a specific, individual government employee is exempt." Later, in Rivera v. City of Passaic (Passaic), GRC Complaint No. 2011-214 (July 2012), the GRC found that where a Complainant is seeking reports on police officers who have been injured on duty, such reports will pertain to a specific, individual government employee. Pursuant to Fenichel, those records therefore are personal in nature and constitute personnel records. Here, the Custodian certified that the portion of the request seeking "injury reports" of an officer was denied, as it was a medical personnel record.

In the instant matter, this portion of the Complainant's request sought an injury report of an officer from a particular date and event. The Custodian certified that the requested report related "directly to the police officer's medical history, diagnosis, treatment or evaluation" and was therefore properly denied pursuant to N.J.S.A. 47:1A-10. Such information would also be exempt under paragraph 4.b.1 of Executive Order 26. Therefore, the Custodian lawfully denied access to the responsive injury reports. See also Fenichel, Rivera.

Police Cruiser Video

The Council has previously found that, in light of a custodian's certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian's certification, no unlawful denial of access occurred. See Pusterhofer v. NJ Dep't of Educ. (GRC Complaint No. 2005-49) (July 2005). Here, the Custodian certified that, with respect to the portion of the request asking for "police cruiser video," no such records exist.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested "police cruiser video," described in the Complainant's September 2, 2014 OPRA request, because he certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Absent a viewing of the disputed footage, the GRC is unable to determine whether the requested security camera footage was in fact exempt under OPRA. This

complaint should therefore be referred to the Office of Administrative Law to determine the facts of the case and a further determination of whether the previous Custodian's actions amount to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances, limited to the Complainant's July 24, 2014 OPRA request. The Council emphasizes that the issues as to the disclosures of the records responsive to the Complainant's September 2, 2014 OPRA requests have already been determined by the Council (see below), and thus are not outstanding issues before the Office of Administrative Law.

2. Here, the Custodian certified that she provided the above-mentioned incident reports as well as a one-page arrest report, with Ms. Alston's personal identifying information and the criminal investigation narratives both redacted. Such redactions are proper pursuant to N.J.S.A. 47:1-A-1.1, and therefore the Council declines to order disclosure in this instance because the evidence of record indicates that the requested records were, in fact, disclosed to the Complainant. See also Janeczko v. NJ Dep't of Law and Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), Nance v. Scotch Plains Twp. Police Department, GRC Complaint No. 2003-125 (January 2005).
3. In the instant matter, this portion of the Complainant's request sought an injury report of an officer from a particular date and event. The Custodian certified that the requested report related "directly to the police officer's medical history, diagnosis, treatment or evaluation" and was therefore properly denied pursuant to N.J.S.A. 47:1A-10. Such information would also be exempt under paragraph 4.b.1 of Executive Order 26. Therefore, the Custodian lawfully denied access to the responsive injury reports. See also Fenichel v. Ocean City Board of Education (Cape May), GRC Complaint No. 2002-82 (January 2003), Rivera v. City of Passaic (Passaic), GRC Complaint No. 2011-214 (July 2012).
4. The Custodian has borne his burden of proof that he lawfully denied access to the requested "police cruiser video," described in the Complainant's September 2, 2014 OPRA request, because he certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ. (GRC Complaint No. 2005-49).

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